

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 242

June 7, 1995, 6:25 pm
Page S-7857 Temp. Record

TERRORISM PREVENTION/Final Passage

SUBJECT: Comprehensive Terrorism Prevention Act of 1995 . . . S. 735. Final passage, as amended.

ACTION: BILL PASSED, 91-8

SYNOPSIS: As amended and passed, S. 735, the Comprehensive Terrorism Prevention Act of 1995, will enact law enforcement provisions to prevent terrorism and to apprehend and punish terrorists, and will reform Federal and State capital and noncapital habeas corpus procedures. Details are provided below.

Criminal law enhancements include the following:

- increased penalties will be applied for conspiring to commit a crime involving explosives;
- Federal penalties will apply against conspiracies to commit terrorist acts against Americans overseas if any acts in furtherance of those conspiracies are committed in the United States;
- penalties will be increased for certain terrorist crimes;
- the possession of explosives that are known to have been stolen will be criminalized; and
- penalties for arson and explosives crimes against property will be increased.

International terrorism provisions include the following:

- The President is urged by Congress to use all necessary means, including covert action and military force, to combat terrorism;
- United States aid to countries that provide military equipment to terrorist nations will be prohibited, though the President will be permitted to waive this prohibition if he reports to Congress on why he thinks such a waiver is in the national interest;
- aid will not be given to countries that aid terrorists, though the President will be permitted to waive this prohibition if he reports to Congress on why he thinks such a waiver is in the national interest;
- military purchases by countries that do not cooperate with anti-terrorism efforts will not be permitted under the Arms Export Control Act;
- the United States will oppose international financial assistance to countries that support terrorism;

(See other side)

YEAS (91)				NAYS (8)		NOT VOTING (1)	
Republican (52 or 96%)		Democrats (39 or 87%)		Republicans (2 or 4%)	Democrats (6 or 13%)	Republicans (0)	Democrats (1)
Abraham	Hutchison	Akaka	Heflin	Hatfield	Feingold		Conrad ²
Ashcroft	Inhofe	Baucus	Hollings	Packwood	Moseley-Braun		
Bennett	Jeffords	Biden	Inouye		Moynihan		
Bond	Kassebaum	Bingaman	Johnston		Pell		
Brown	Kempthorne	Boxer	Kennedy		Simon		
Burns	Kyl	Bradley	Kerrey		Wellstone		
Campbell	Lott	Breaux	Kerry				
Chafee	Lugar	Bryan	Kohl				
Coats	Mack	Bumpers	Lautenberg				
Cochran	McCain	Byrd	Leahy				
Cohen	McConnell	Daschle	Levin				
Coverdell	Murkowski	Dodd	Lieberman				
Craig	Nickles	Dorgan	Mikulski				
D'Amato	Pressler	Exon	Murray				
DeWine	Roth	Feinstein	Nunn				
Dole	Santorum	Ford	Pryor				
Domenici	Shelby	Glenn	Reid				
Faircloth	Simpson	Graham	Robb				
Frist	Smith, Bob	Harkin	Rockefeller				
Gorton	Snowe		Sarbanes				
Gramm	Specter						
Grams	Stevens						
Grassley	Thomas						
Gregg	Thompson						
Hatch	Thurmond						
Helms	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

- terrorist states will be open to suit in U.S. courts; and
- membership in or active support of a terrorist organization will be grounds for exclusion from the United States; the Secretary of State, after consultation with the Secretary of the Treasury, will determine which organizations have engaged in terrorist activity.

Alien removal:

- a new "terrorism court" comprised of sitting district court judges will be created to hear deportation cases involving alien terrorists; this court, through a limited ex parte procedure (see vote No. 235), will be able to withhold evidence for national security reasons;

- in non-terrorist deportation proceedings, the same ex parte procedures as used for terrorists will apply;
- changes will be made to the Immigration and Nationality Act to facilitate the removal of alien terrorists; and
- a court may authorize the release of certain confidential Immigration and Naturalization files for specified law enforcement purposes.

Fundraising for terrorist organizations:

- knowingly providing material support directly or indirectly to terrorist organizations, as designated by the Secretary of State in consultation with the Secretary of the Treasury, will be criminalized;

- Congress will have 30 days to consider a law to disapprove an initial terrorist designation before it goes into effect, the Secretary may repeal a designation, and no designation will last longer than 1 year; and

- judicial review of designations, with limited ex parte procedures for classified information, will be provided.

Assistance to Federal Law Enforcement Agencies:

- the Federal Bureau of Investigation (FBI), upon approval of a judge or magistrate, may obtain from credit bureaus ex parte disclosure of the name, address, former addresses, places of employment, and former places of employment of individuals for foreign counterintelligence purposes;

- the FBI may obtain ex parte disclosure of credit reports by court order from credit bureaus for foreign counterintelligence purposes;

- the FBI may obtain, by court or magistrate order, ex parte records of travel companies, hotels, public storage businesses, and vehicle rental firms in cases involving foreign counterintelligence or terrorism;

- maximum awards will be increased for information leading to the capture and conviction of terrorists;

- the interception of communications in certain terrorism cases will be authorized;

- a study of putting taggants in explosives will be made, and authorization to issue regulations requiring taggants after completion of that study will be given (see vote No. 234);

- multipoint wiretap authority will be expanded (see vote No. 236);

- telecommunications services may be required to preserve evidence in certain investigations; and

- authorizations will be increased for the FBI, the INS, the Customs Service, the Drug Enforcement Administration, the Department of Justice, the Bureau of Alcohol, Tobacco, and Firearms, and the Secret Service.

Habeas corpus reform (for related debate, see vote Nos. 237-241):

"Habeas corpus" in the context of this debate refers to the collateral (not on the merits) review of criminal convictions. State and Federal prisoners may file habeas corpus petitions alleging that constitutional, legal, or treaty requirements were violated in the process of convicting them. State prisoners may file petitions in State or Federal courts; Federal prisoners may file petitions only in Federal courts; District of Columbia prisoners may file petitions only in non-Federal district courts. Post-conviction habeas review of State cases in Federal courts is a right that was granted by statute.

Reforms that will apply to Federal collateral review of both State and Federal capital and non-capital cases include the following:

- a habeas petition will have to be filed within 1 year of the later of: (a) the date on which a judgment became final; (b) the date on which a State impediment that violated the Constitution or a Federal law was removed; (c) the date on which a new constitutional right was recognized and applied retroactively; or (d) the date on which the factual predicate for the claim should have been discovered with due diligence;

- State remedies will have to be exhausted before a Federal habeas petition is filed;

- deference will be given to State decisions; generally, State decisions, if reasonable under Federal law and the Constitution, and if reasonable based on the facts, will be considered correct, and to have an application for a writ accepted a prisoner will need clear and convincing evidence of incorrectness;

- for an evidentiary hearing on a factual claim in an initial or successive habeas petition that was not previously made, the applicant will have to show that the claim relies on either: (a) a new, previously unavailable constitutional rule retroactively applied by the Supreme Court to cases on collateral review; or (b) the factual predicate for the claim could not have been previously discovered through due diligence, and the facts underlying the claim would be sufficient to demonstrate with clear and convincing evidence that but for constitutional error no reasonable factfinder would have found the applicant guilty;

- second and successive petitions will only be granted for new, retroactive constitutional rights and for new factual claims; and

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- ex parte communications by defense lawyers asking for funding for investigative, expert, or other services will not be allowed without a proper showing of the need for confidentiality.

Additional habeas reforms that will apply to capital cases if specified counsel standards are met;

- habeas petitions based on the ineffectiveness or incompetence of counsel in capital cases will not be accepted;
- executions will be stayed during the pendency of habeas procedures, until the time to file a habeas corpus petition expires, or until a prisoner waives the right to file; no Federal court may stay an execution further unless a valid second or successive petition has been filed;

- an application for Federal habeas review will have to be made within 180 days of the exhaustion of all direct State appeals or of the expiration of the time for seeking such review; those 180 days will be tolled (not counted) during Supreme Court direct review periods and State collateral review periods; the 180 days may be extended by 30 days if a showing of good cause is made;

- a habeas petition on a State capital sentence based on a claim that has not been raised and decided on the merits in the State courts will not be considered unless: it was not raised due to State constitutional error; it is based on a new Federal right that the Supreme Court has recognized and retroactively applied; or the factual predicate underlying the claim could not have been discovered with due diligence on time to present it in earlier court proceedings;

- a final judgment on any writ of habeas corpus generally will be made within 180 days of its filing, though this time may be extended by 30 days; the State may enforce this time limit by filing a writ of mandamus with the court of appeals (to have the appellate court order the district court to comply); and

- petitions for appellate review will be accepted or rejected within 30 days and will be decided within 120 days.

Miscellaneous:

- terrorism will be a Racketeering (RICO) predicate;
- Conspiring to commit a terrorist offense, as well as committing a terrorism offense, will be illegal;
- it will be illegal to distribute information on the making of explosives with the intent that such information will be used for criminal purposes;

- the statute of limitations for violations of the National Firearms Act will be 5 years;

- foreign air carriers providing passenger service to and from the United States must provide a level of protection equal to that level required of American air carriers;

- voter registration cards will not be used as proof of citizenship;

- the nerve gases sarin and VX will be listed as hazardous wastes under the Solid Waste Disposal Act;

- assessments on criminals to compensate victims under the Victims of Crime Act will be doubled;

- grants may be given under the Victims of Crime Act to compensate victims of domestic and international terrorism;

- the Secretary of the Treasury will consult with non-profit fertilizer research centers in conducting a study relating to the regulation and use of fertilizer as a pre-explosive material;

- the Attorney General will be permitted to request, and the Secretary of Defense may provide, Department of Defense assistance in emergency situations involving biological or chemical weapons of mass destruction (posse comitatus).

Those favoring final passage contended:

This bipartisan bill will add important weapons to the Government's arsenal in its fight against terrorism, while at the same time it will jealously protect American's civil liberties. Penalties for acts of foreign and domestic terrorism will be increased, a constitutional mechanism will be enacted to permit the deportation of terrorist aliens without revealing national secrets, and law enforcement funding and authority to combat terrorism will be increased.

Most importantly, though, this bill will enact long overdue habeas corpus reforms to end frivolous appeals in both capital and non-capital cases. These reforms, more than any other measures in this bill, bear directly on the tragic events in Oklahoma City. We commend President Clinton for calling for punishing the terrorists who blew up the Federal building in Oklahoma City to the fullest extent of the law, including by applying the death penalty. However, due to the current rules which allow felons to file endless habeas corpus appeals of their convictions, the death sentence is rarely imposed. There are currently 2,976 prisoners on death row, but since 1977 there have been only 281 executions. The average stay on death row is more than 9 years, and prisoners who are sentenced to death are more likely to die of natural causes than they are to be executed. Nearly all of the delay is from the abuse of the right to file habeas corpus petitions of State convictions in Federal and State courts. The Federal Government gave State prisoners the right to file petitions in Federal court by statute; that right is being abused with frivolous appeals, and this bill will hence curtail it. Strict time limits will be imposed, and frivolous appeals will not even be entertained. The result of these reforms, if the Oklahoma City bombers are sentenced to death, is that they will be executed within 2 years instead of within 10, 20, or more years. These reforms will make it possible for justice to be served.

S. 735 strikes a careful balance between necessary vigilance against terrorist threats and the preservation of our cherished freedoms. Throughout its history, America has been largely free from terrorist attacks. We fear that the bombing in Oklahoma shows

that times have changed. From now on, America must be equipped to prevent and punish terrorist attacks. This bill provides the tools that are necessary to preserve the freedom of Americans from terrorism, so we are pleased to vote in favor of final passage.

Those opposing final passage contended:

We have a number of concerns with this bill. The bombing of the Federal building in Oklahoma City was indeed a tragedy, but we must not let our desire to respond firmly and swiftly to that tragedy cause us to enact measures which we will later regret. This bill contains several measures on which we think the Senate is rushing to judgment. First and foremost, we are very troubled by the habeas corpus provisions (see vote Nos. 237-241). The access of prisoners, especially capital prisoners, to the Federal courts to pursue claims that their Federal or constitutional rights have been violated should be kept unfettered. We recognize that the current process results in undue delays and appeals, but we think that the strict rules in this bill will put expediency before justice. Other provisions in this bill which greatly trouble us include the authority for "roving," multipoint wiretaps and the posse comitatus provision. This bill, to be effective, did not need all these controversial provisions to be added. While we support additional law enforcement efforts, this bill goes too far in many areas. Therefore, we urge its rejection.